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Attorneys for Defendants and Counterclaimants BAXTER
INTERNATIONAL INC. and BAXTER HEALTHCARE CORPORATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FRESENIUS MEDICAL CARE HOLDINGS,
INC., a New York corporation; and FRESENIUS
USA, INC., a Massachusetts corporation,

Plaintiffs and Counterdefendants,

v.

BAXTER INTERNATIONAL, INC., a
Delaware corporation; and BAXTER
HEALTHCARE CORPORATION, a
Delaware corporation,

Defendants and Counterclaimants.

Case No. C 03-01431 SBA (EDL)

**JOINT STIPULATION AND ORDER
DISMISSING CERTAIN CLAIMS,
COUNTERCLAIMS AND DEFENSES**

(list of counsel continued from previous page)

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Attorneys for Defendants and Counterclaimants BAXTER
INTERNATIONAL INC. and BAXTER HEALTHCARE CORPORATION

1 Plaintiffs and Counterdefendants Fresenius Medical Care Holdings, Inc. and Fresenius
2 USA, Inc. (collectively "Fresenius") and Defendants and Counterclaimants Baxter International,
3 Inc. and Baxter Healthcare Corporation (collectively "Baxter), by and through their respective
4 counsel, hereby stipulate as follows:

5 1. All claims, counterclaims, and defenses of the parties concerning Fresenius' model
6 2008H hemodialysis machine are hereby dismissed with prejudice.

7 2. All claims, counterclaims, and defenses of the parties concerning Baxter's U.S.
8 Patent No. 5,486,286 and claims 1 and 6 of Baxter's U.S. Patent No. 5,326,476 are hereby
9 dismissed with prejudice.

10 3. Fresenius' Third Affirmative Defense (Laches), Fourth Affirmative Defense
11 (Estoppel), Sixth Affirmative Defense (Failure to Mark), and Eighth Affirmative Defense
12 (Prosecution Laches) are hereby dismissed with prejudice as to all patents currently asserted by
13 Baxter.

14 4. Fresenius' Tenth Affirmative Defense (Unenforceability) is hereby dismissed with
15 prejudice as to Baxter's U.S. Patent Nos. 5,486,286 and 5,744,027 only.

16 5. Fresenius' defense of improper inventorship based on alleged contribution by Ziba
17 Design is hereby dismissed with prejudice as to all patents currently asserted by Baxter.

18 6. Fresenius' defense of indefiniteness is hereby dismissed with prejudice as to claims
19 1, 13 and 14 of Baxter's U.S. Patent No. 6,284,131 only.

20
21 Dated: March 10, 2006

FISH & RICHARDSON P.C., P.A.

22
23 By: /s/ Thomas S. McClenahan

24 Attorneys for Plaintiffs and Counterdefendants
25 Fresenius Medical Care Holdings, Inc. and
26 Fresenius USA, Inc.

1 Dated: March 9, 2006

BELL, BOYD & LLOYD LLC

2
3 By: /s/ Thomas L. Gemmell

4 Attorneys for Defendants and Counterclaimants
5 Baxter International Inc. and Baxter Healthcare
6 Corporation

7 **IT IS SO ORDERED.**

8 Dated: 3/14/06

9 By: *Saundra B. Armstrong*
10 HON. SAUNDRA B. ARMSTRONG
11 United States District Court Judge
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SIGNATURE ATTESTATION

I, Thomas S. McClenahan, hereby attest:

1. I have on file all holograph signatures for any signatures indicated by a
“conformed” signature (/s/) within this e-filed document.

2. I shall maintain records of the original with the holograph signature for subsequent
production for the Court if so ordered or for inspection upon request by a party until one year after
final resolution of the action pursuant to General Order 45 of the United States District Court for
the Northern District of California.

I declare under penalty of perjury under the laws of the State of California and the United
States of America that the foregoing is true and correct. Executed in Minneapolis, Minnesota on
March 10, 2006.

Dated: March 10, 2006

FISH & RICHARDSON P.C., P.A.

By: /s/ Thomas S. McClenahan
Thomas S. McClenahan

Attorneys for Plaintiffs and Counterdefendants
FRESENIUS MEDICAL CARE HOLDINGS,
INC., and FRESENIUS USA, INC.